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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/578,437 05/25/00 FAN

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EXAMINER

GELLNER, J

ART UNIT

PAPER NUMBER

3643

DATE MAILED:

01/02/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

09/578,437

Applicant(s)

FAN, JIANHUA

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 December 2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) 22 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

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SUPERVISORY PATENT EXAMINER
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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

PMP
12/28/00

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Acknowledgement is made of the Request for Withdrawal as Attorney entered as 6 September 2000 and its approval 19 September 2000.

Applicant's amended claim's 2-22 have been entered but they have been renumbered 23-43 with a concomitant change in dependencies. The renumbering is required because the application as originally filed included Claims 2-22 which were canceled in a pre-amendment, paper no. ½, entered 25 May 2000. In any subsequent response Applicant should refer to amended Claims 2-22 as Claims 23-43.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 27-39 (Applicant's Claims 6-18) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 27 (Applicant's Claim 6), line 6, the phrase "of a plant pot and support the plant pot" is indefinite because it is unclear due to improper English. Possibly, the phrase should be -- of a plant pot to support the plant pot.

In Claims 28-36 (Applicant's Claims 7-15) the dependency in each claim is unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and Claims 23,24,33,35, and 40-42 (Applicant's Claims 2,3,12,14, and 19-21) rejected under 35 U.S.C. 102(b) as being anticipated by Kao (5,341,596).

As to Claims 1 and 24 (Applicant's Claim 3), Kao discloses a self watering tray for a pot (Figs. 2-4) comprising a plate (1) the plate having side walls and a bottom and holding fluid (not shown), at least one leg (3 and 5) coupled (defining "coupled" as the structure shown in Fig. 3) to the plate filled with a water sucking material (5) for draining and sucking, and at least one support (12) coupled to the plate (defining "coupled" as the structure shown in Fig. 2).

As to Claim 23 (Applicant's Claim 2), Kao discloses a self watering tray for a pot (Figs. 2-4) comprising a plate (1) the plate having side walls and a bottom and holding fluid (not shown), at least one wick (5) accompanied with the plate and inserted into the bottom of a plant pot (see 5,6 and 61 of Figs 3 and 4), and at least one support (12) coupled to the plate (defining "coupled" as the structure shown in Fig. 2).

As to Claim 33 (Applicant's Claim 12), Kao further discloses the supports integral on the bottom of the plate.

As to Claim 35 (Applicant's Claim 14), Kao further discloses the supports accompanying the plate.

As to Claims 40 and 42 (Applicant's Claims 19 and 21), Kao discloses a selfwatering apparatus (Figs. 1-4) comprising a plate (1) the plate having a water holding area (region below

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element 2 in Figs. 2 and 3) and region for holding a planting material (region above element 2 in Figs. 2 and 3; the planting material is shown in pot (6) of Fig. 1), at least one leg (3 and 5) extending between the two areas (see Fig. 3) capable of sucking liquid and draining liquid.

As to Claim 41 (Applicant's Claim 20), Kao further discloses a cover (2) separating the two regions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25, 26 and 34 (Applicant's Claims 4, 5, and 13) are rejected under 35 U.S.C. 103(a) as being unpatentable over Kao (5,341,596).

As to Claim 25 (Applicant's Claim 4), the limitations of Claim 24 (Applicant's Claim 3) are disclosed as described above. Kao further discloses the pot being round (see 6 of Fig. 3). Not disclosed is the plate triangular in shape. However, because a round and triangular plate were art-recognized equivalents at the time of the invention in potting systems where it is immaterial whether the plates are round or triangular it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute for a round plate with a triangular plate.

As to Claim 25 (Applicant's Claim 5), the limitations of Claim 24 (Applicant's Claim 3) are disclosed as described above. Kao further discloses the pot being round (see 6 of Fig. 3). Not disclosed is the plate rectangular in shape. However, because a round and rectangular plate were

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art-recognized equivalents at the time of the invention in potting systems where it is immaterial whether the plates are round or rectangular it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute for a round plate with a rectangular plate.

As to Claim 34 (Applicant's Claim 13), the limitations of Claims 1 or 2 (Applicant's Claims 1 and 23) are disclosed as described above. Not disclosed is the support detachably mounted on the bottom of the plate. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Kao by making the supports detachably mounted to the base so as to allow for a more efficient cleaning of the device.

Allowable Subject Matter

Claims 27, 37, 38, 39 (Applicant's Claims 6, 16, 17, 18) would be allowable if Claim 27 (Applicant's Claim 6) were rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 28-32, 36 (Applicant's Claims 7-11, 15) would be allowable if their dependencies were changed to dependent on Claim 6 exclusively and the rejection under 35 U.S.C. section 112, second para., stated above was remedied.

Claim 43 (Applicant's Claim 22) is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 1 December 2000 have been fully considered but they are not persuasive.

The crux of Applicant's argument is that: a) the "leg" of Applicant's invention supports the pot while the wicking system of Kao's invention does not supporting (Applicant's Amendment page 5), b) Kao's wicking system is neither coupled to nor accompanying the plate, and (Applicant's Amendment page 5), c) Kao's invention sits on a disk and, therefore, disallows air flow under the pot (Applicant's Amendment page 5).

As to Argument a), the plain language of Claim 1 (unamended) did not claim the "leg" to support the pot so the rejection of Kao was proper. As to Argument b), Examiner considers the terms "coupled" and "accompanying" to be very broad and considers the invention of Kao to have a "leg" or wicking system coupled to the plate through the supports and disk. As to Argument c), the plain language of Claim 1 (unamended) did not claim airflow under the pot.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fan ('580) and Fan ('334) disclose a plate with a pot with a leg and a wicking medium.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

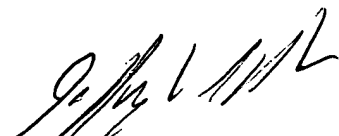
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7687, 703.305.3597, or 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone numbers are 306.4177 or 308.1113.


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12/28/00